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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE: SILVER STATE
BROADCASTING, LLC

☐ AFFECTS THIS DEBTOR.
☐ AFFECTS GOLDEN STATE
BROADCASTING, LLC
☐ AFFECTS MAJOR MARKET
RADIO LLC
☒ AFFECTS ALL DEBTORS.

Case No. 21-14978-abl (Chapter
11)

Jointly Administered with:
21-14979-abl Golden State
Broadcasting, LLC
21-14980-abl Major Market
Radio LLC

**OPPOSITION TO
RECEIVER'S MOTION FOR
ALLOWANCE OF
ADMINISTRATIVE CLAIM
and TO STIPULATION RE
SAME ENTER INTO BY
TRUSTEE AND RECEIVER
TODAY**

Hearing Date: May 1, 2023
Time: 1:30 p.m.

Come now Debtors herein, by counsel, who oppose the Motion of W. Lawrence
Patrick ("Receiver") as follows:

Facts:

Receiver was in place for a year to two before the Debtors filed their Chapter 11
Petition. He now seeks an order of this court requiring the Trustee to pay for his

1 services as Receiver. Undersigned has located only one circuit level case dealing ex-
2 pressly with the issues presented by the Receiver's motion, being *Szwak v. Earwood*
3 (In re Bodenheimer, Jones, Szwak, & Winchell L.L.P.), 592 F.3d 664 (5th Cir. 2009).
4 As undersigned has found no bankruptcy, district or circuit level cases in this circuit
5 which disagree with Szwak, it will be assumed good law. The receiver seeks compen-
6 sation for both his prepetition and postpetition work, without ever clearly delineating
7 the manner in which that work benefited the Debtors' estate.

8 As to the receiver's pre and post-petition work, *Szwak* holds:

9
10 Appellant David Szwak appeals the district court's order affirming the
11 bankruptcy award to Appellee Dale Earwood of \$ 45,227.53 for his services
12 and expenses as a state-law liquidator and later as a federally superseded
13 custodian of a now-bankrupt law firm. Because the bankruptcy court failed
14 to consider how Earwood's services and expenses met the terms of 11 U.S.C.
15 § 543(a) and benefited the bankruptcy estate when determining whether
16 they qualified as an administrative expense, we hold the award to be error
17 and an abuse of the bankruptcy court's discretion.

18 *Szwak*, supra p 592 F.3d 664, 666 (5th Cir. 2009)

19 As to a receiver's post-petition work, *Szwak* specifically holds:

20 In conclusion, the language of § 543 clearly circumscribes the actions of
21 superseded custodians to those which are necessary to preserve the assets
22 of the estate once a bankruptcy petition has been filed.

23
24 and

25 However, nowhere in the relevant bankruptcy statutes does it state that
26 a superseded custodian is authorized to oppose a bankruptcy petition or to
27 employ the estate's resources in doing so.

28 *Szwak*, supra p 671.

1 While pre-petition services are not governed by § 543, they are governed
2 by § 503(b)(3)(E), which allows payment from the bankruptcy estate to pre-
3 petition custodians for services and "actual, necessary expenses." Earwood
4 argues that because the words "benefit to the estate" are not in 503(b)(3)(E),
5 no such requirement exists. However, we have interpreted the terms "ac-
6 tual" and "necessary" as requiring a benefit to the estate under a related
7 provision of § 503, despite the fact that no corresponding language is found
8 in that provision.

9 *Szwak*, supra p 672.

10 The receiver's motion does not delineate the services he provided which benefited
11 the estate and therefore should be summarily rejected.

12 So should the stipulation reached today between the Trustee and the Receiver,¹
13 which allows the Receiver an \$87,198.50 administrative claim, while otherwise leav-
14 ing the Receiver's general unsecured claim unimpaired. The stipulation does not de-
15 lineate the benefits received by the estate from the work done by counsel described
16 therein, nor does it consider the Debtors' as yet unfilled counterclaims against the Re-
17 ceiver which should be offset against any viable administrative claim. The net effect
18 of the work done by Receiver's attorneys was to hurt rather than help the Debtors.
19 For example, the Receiver expended risk capital in an effort to get a windfall for the
20 Receiver and his collaborator, VCY, which did not pan out. For other example Debtor
21 has an \$18,000,000 counterclaim against the Receiver for damages to Debtor's San
22 Francisco station and another \$18,000,000 claim for his damage inflicted on the Las
23 Vegas stations, not counting some \$3,000,000 in counterclaims for damages to the
24 Palm Springs market stations.

25 Fox Rothchild was counsel for Mr. Stolz's parent company, Royce International
26 Broadcasting (the insured) and represented the now Debtors' defense in the WB Mu-
27 sic case, by assignment from Mr. Stolz's insurance carrier, Atlantic Specialty. The
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¹ The stipulation may be subject to Rule 9014.

1 judgment entered against the now Debtors in the WB music case is precisely why we
2 are here today. Fox Rothchild is clearly conflicted.

3 Sciarrino and Shubert represented the Receiver in his unsuccessful efforts to wrest
4 the licenses of radio stations away from the now Debtors and resell them to VCY.
5 Clearly Debtors should not have to now pay for this. Such would be grossly unfair.

6 Respectfully submitted this 17th day of April, 2023.

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8 WHITE LAW CHARTERED

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10 By:____/s/ John White____

11 John A. White, Jr.
12 Attorney for the Debtors
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